

15-10668-NMG

FILED  
CLERK'S OFFICE

SUCV2005-01021

Sovereign Bank v Bowditch Boat Holding LLC et al

File Date	03/16/2005	Status	Disposed: transferred to other court (dtrans)	10:25 AM 04/25/2005	P 1:19
Status Date	04/05/2005	Session	A - Civil A		
Origin	1	Case Type	A03 - Commercial paper		PENDING COURT NOTICE PENDING
Lead Case		Track	F		
Service	06/14/2005	Answer	08/13/2005	Rule 12/19/20	08/13/2005
Rule 15	08/13/2005	Discovery	01/10/2006	Rule 56	02/09/2006
Final PTC	03/11/2006	Disposition	05/10/2006	Jury Trial	No

## PARTIES

**Plaintiff**  
Sovereign Bank  
Active 03/16/2005

**Private Counsel 648526**  
Meegan B Casey  
Riemer & Braunstein  
3 Center Plaza  
Boston, MA 02108  
Phone: 617-523-9000  
Fax: 617-880-3456  
Active 03/16/2005 Notify

**Defendant**  
Bowditch Boat Holding LLC  
Served: 03/22/2005  
Served (answr pending) 04/04/2005

**Private Counsel 547375**  
Brian P Flanagan  
Flanagan & Hunter  
88 Black Falcon Avenue  
Boston, MA 02210-2429  
Phone: 617-482-3366  
Fax: 617-482-3467  
Active 04/05/2005 Notify

**Defendant**  
Goldeneye Corporation  
Served: 03/22/2005  
Served (answr pending) 03/29/2005

**Private Counsel 069830**  
Michael J Calabro  
Flanagan & Hunter  
88 Black Falcon Avenue  
Suite 274  
Boston, MA 02210-2429  
Phone: 617-482-3366  
Fax: 617-482-3467  
Active 04/05/2005 Notify

## Commonwealth of Massachusetts

## SUFFOLK SUPERIOR COURT

## Case Summary

## Civil Docket

SUCV2005-01021

## Sovereign Bank v Bowditch Boat Holding LLC et al

**Defendant**

Salem Whale Watch &amp; Cruise Company LLC

Served: 03/23/2005

Served (answr pending) 04/04/2005

**Defendant**

Lake Champlain Transportation Company

Served: 03/19/2005

Served (answr pending) 03/28/2005

**Defendant**

Robert E Blair Jr

Served: 03/18/2005

Served (answr pending) 03/29/2005

**Defendant**

Robert J Salem

323 Concord St.

Gloucester, MA 01930

Served: 03/18/2005

Served (answr pending) 03/29/2005 Notify

**Defendant**

Henry Lord

Service pending 03/16/2005

## ENTRIES

Date	Paper	Text
03/16/2005	1.0	Complaint
03/16/2005		Origin 1, Type A03, Track F.
03/16/2005	2.0	Civil action cover sheet filed
03/16/2005	3.0	Plaintiff Sovereign Bank's MOTION for appointment of special process server Butler & Witten of Boston (Fahey,J)
03/16/2005	4.0	MOTION for Attachment of Real Estate
03/16/2005	5.0	MOTION for Attachment of Real Estate

Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT  
Case Summary  
Civil Docket04/05/2005  
02:59 PMSUCV2005-01021  
Sovereign Bank v Bowditch Boat Holding LLC et al

Date	Paper	Text
03/16/2005	6.0	MOTION for Attachment of Real Estate
03/16/2005		Summons and order of notice issued; returnable Tues Mar 29, 2005 in Ctrm #4 re: Mos for attachment (Fahey,J) Summons & Order of notice issued (See P#1)
03/24/2005	7.0	Affidavit in support of plff's motion for real estate attachments
03/28/2005	8.0	SERVICE RETURNED: Lake Champlain Transportation Company(Defendant) (certified mail on 3/19/05)
03/29/2005	8.1	Summons and Order of Notice re: Goldeneye Corporation, (In hand to Robert E. Blair Jr), Robert E Blair Jr, (last & usual place of abode), and Robert J Salem (last & usal place of abode)
03/30/2005	9.0	Findings and Ex Parte Order for Approval of Attachment in the amount of \$205,000.00 as to each of the deft's Robert J Salem, Robert E Blair & Henry Lord - This attachment is subject to being vacated on 48 hours notice (Elizabeth M. Fahey, Justice) (Entered 3/30/05)
03/30/2005		MOTION (P#6) ALLOWED (Elizabeth M. Fahey, Justice) Notices mailed April 01, 2005 (entered 3/30/05)
03/30/2005		MOTION (P#5) ALLOWED (Elizabeth M. Fahey, Justice) Notices mailed April 01, 2005 (entered 3/30/05)
03/30/2005		MOTION (P#4) ALLOWED (Fahey, Justice) Notices mailed April 01, 2005 (entered 3/30/05)
04/04/2005	10.0	SERVICE RETURNED: Bowditch Boat Holding LLC(Defendant) (In hand to Robert E Blair)
04/04/2005	11.0	SERVICE RETURNED: Salem Whale Watch & Cruise Company LLC(Defendant) (last & usual place of abode)
04/05/2005		Certified copy of petition for removal to U. S. Dist. Court of Deft. Bowditch Boat Holdings LLC U. S. Dist.#(05-10668NMG).
04/05/2005		Case REMOVED this date to US District Court of Massachusetts

## EVENTS

Date	Session	Event	Result
03/29/2005	Civil A	Motion/Hearing: R E attachmnt	Event held as scheduled

HEREBY ATTEST AND CERTIFY ON  
APRIL 6, 2005 THAT THE  
 FORGOING DOCUMENT IS A FULL  
 TRUE AND CORRECT COPY OF THE  
 ORIGINAL ON FILE IN MY OFFICE,  
 AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN  
 CLERK / MAGISTRATE  
 SUFFOLK SUPERIOR CIVIL COURT  
 DEPARTMENT OF THE TRIAL COURT

ASSISTANT CLERK.

1  
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SOVEREIGN BANK, SUCCESSOR BY  
MERGER WITH FIRST ESSEX BANK,  
F.S.B..

Plaintiff,

v.

BOWDITCH BOAT HOLDING, LLC;  
GOLDENEYE CORPORATION; SALEM  
WHALE WATCH & CRUISE  
COMPANY, LLC; LAKE CHAMPLAIN  
TRANSPORTATION COMPANY;  
ROBERT E. BLAIR, JR.; ROBERT J.  
SALEM AND HENRY LORD,

Defendants.

SUPERIOR COURT  
CIVIL ACTION NO.

## COMPLAINT

SUFFOLK, SS. SUPERIOR COURT DEPT.  
 (date) 12/16/2001  
 Notice ordered issued herein returnable  
 at the Superior Court on 4/1/2001,  
 to show cause why Attainment Real Estate  
should not allowable (3rd party)  
By the Court, (Judge J.D.)

INTRODUCTION

The Plaintiff, Sovereign Bank, successor by merger with First Essex Bank, F.S.B. (the "Bank"), brings this action to enforce the terms and conditions of a certain Commercial Promissory Note dated June 14, 2000 in the original principal amount of \$290,000.00 made by Bowditch Boat Holdings LLC payable to the Bank, as modified. The Bank also seeks to enforce the terms and conditions of various Commercial Guaranties executed by the remaining defendants by which they absolutely and unconditionally guarantied the indebtedness of Bowditch Boat Holdings LLC to the Bank.

PARTIES

1. The Plaintiff, Sovereign Bank, successor by merger with First Essex Bank, F.S.B. (the "Bank"), is a federal savings bank, duly organized and existing under the laws of the United States of America, with a usual place of business at 75 State Street, Boston, Suffolk County, Massachusetts.

2. The Defendant, Bowditch Boat Holdings LLC (the "Borrower"), is a Massachusetts limited liability company with a usual place of business at 4 Blaney Street, Salem, Massachusetts.

3. The Defendant, Robert E. Blair, Jr. ("Blair"), is an individual with a usual place of residence at 39 Kittery Avenue, Rowley, Massachusetts.

4. The Defendant, Robert J. Salem ("Salem"), is an individual with a usual place of residence at 323 Concord Street, Gloucester, Massachusetts.

5. The Defendant, Henry J. Lord ("Lord"), is an individual with a usual place of residence at 6134 Barroll Road, Baltimore, Maryland.

6. The Defendant, Goldeneye Corporation ("Goldeneye"), is a corporation organized and existing under the laws of Maryland and authorized to do business in Massachusetts with a usual place of business at 6225 Smith Avenue, Baltimore, Maryland.

7. The Defendant, Salem Whale Watch and Cruise Company LLC ("Salem Whale Watch"), is a Delaware limited liability company authorized to do business in Massachusetts with a usual place of business at 4 Blaney Street, Suite 1, Salem, Massachusetts.

8. The Defendant, Lake Champlain Transportation Company ("Lake Champlain"), is a Vermont Corporation with a usual place of business at King Street Dock, Burlington, Vermont.

## **COUNT I**

### **(v. Borrower to Enforce the Note)**

9. The Bank realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 8 above.

10. On June 14, 2000, the Borrower executed and delivered to First Essex Bank, F.S.B., a Commercial Promissory Note (the "Note") in the original principal amount of

\$290,000.00. A true and accurate copy of the Note is attached hereto and incorporated herein by reference as **Exhibit A**.

11. On November 30, 2000, April 14, 2002, June 3, 2003 and August 8, 2003, the Borrower and First Essex Bank, F.S.B. entered into certain Change in Terms Agreements modifying, *inter alia*, certain payment terms of the Note.

12. Sovereign Bank holds the Note, as modified, as successor by merger with First Essex Bank, F.S.B.

13. The Borrower defaulted under the terms and conditions of the Note, as modified, by, *inter alia*, failing to make payments as and when due.

14. As a result of the defaults, on March 9, 2005, the Bank made demand on the Borrower for all amounts due and owing under the Note. A true and accurate copy of the Demand is attached hereto and incorporated herein by reference as **Exhibit B**.

15. The Borrower failed and refused and continues to fail and refuse to respond to the demand.

16. Therefore, the Borrower is liable to the Bank in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Note.

## COUNT II

### (v. Blair to Enforce the Guaranty)

17. The Bank realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 16 above.

18. On June 14, 2000, Blair executed and delivered to the Bank a Commercial Guaranty whereby he absolutely and unconditionally guaranteed the Borrower's indebtedness to the Bank. A true and accurate copy of the Guaranty is attached hereto and incorporated herein by reference as **Exhibit C**.

19. Sovereign Bank holds the Guaranty as successor by merger with First Essex Bank, F.S.B.

20. The Borrower defaulted under the terms and conditions of the Note, as modified, as set forth above.

21. Accordingly, on March 9, 2005, the Bank advised Blair of the defaults and made demand for the full amount due under the Commercial Guaranty. A true and accurate copy of the Demand is attached hereto and incorporated herein by reference as **Exhibit D**.

22. Blair failed and refused and continues to fail and refuse to respond to the Demand.

23. Therefore, Blair is liable to the Bank in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty.

### **COUNT III**

#### **(v. Salem to Enforce the Guaranty)**

24. The Bank realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 23 above.

25. On June 14, 2000, Salem executed and delivered to the Bank a Commercial Guaranty whereby he absolutely and unconditionally guaranteed the Borrower's indebtedness to

the Bank. A true and accurate copy of the Guaranty is attached hereto and incorporated herein by reference as **Exhibit E**.

26. Sovereign Bank holds the Guaranty as successor by merger with First Essex Bank, F.S.B.

27. The Borrower defaulted under the terms and conditions of the Note, as modified, as set forth above.

28. Accordingly, on March 9, 2005, the Bank advised Salem of the defaults and made demand for the full amount due under the Commercial Guaranty. A true and accurate copy of the Demand is attached hereto and incorporated herein by reference as **Exhibit F**.

29. Salem failed and refused and continues to fail and refuse to respond to the Demand.

30. Therefore, Salem is liable to the Bank in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty.

#### **COUNT IV**

##### **(v. Lord to Enforce the Guaranty)**

31. The Bank realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 30 above.

32. On June 15, 2000, Lord executed and delivered to the Bank a Commercial Guaranty whereby he absolutely and unconditionally guarantied the Borrower's indebtedness to the Bank. A true and accurate copy of the Guaranty is attached hereto and incorporated herein by reference as **Exhibit G**.

33. Sovereign Bank holds the Guaranty as successor by merger with First Essex Bank, F.S.B.

34. The Borrower defaulted under the terms and conditions of the Note, as modified, as set forth above.

35. Accordingly, on March 9, 2005, the Bank advised Lord of the defaults and made demand for the full amount due under the Commercial Guaranty. A true and accurate copy of the Demand is attached hereto and incorporated herein by reference as **Exhibit H**.

36. Lord failed and refused and continues to fail and refuse to respond to the Demand.

37. Therefore, Lord is liable to the Bank in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty.

## COUNT V

### (v. Goldeneye to Enforce the Guaranty)

38. The Bank realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 37 above.

39. On June 14, 2000, Goldeneye executed and delivered to the Bank a Commercial Guaranty whereby it absolutely and unconditionally guaranteed the Borrower's indebtedness to the Bank. A true and accurate copy of the Guaranty is attached hereto and incorporated herein by reference as **Exhibit I**.

40. Sovereign Bank holds the Guaranty as successor by merger with First Essex Bank, F.S.B.

41. The Borrower defaulted under the terms and conditions of the Note, as modified, as set forth above.

42. Accordingly, on March 9, 2005, the Bank advised Goldeneye of the defaults and made demand for the full amount due under the Commercial Guaranty. A true and accurate copy of the Demand is attached hereto and incorporated herein by reference as **Exhibit J**.

43. Goldeneye failed and refused and continues to fail and refuse to respond to the Demand.

44. Therefore, Goldeneye is liable to the Bank in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty.

## **COUNT VI**

### **(v. Salem Whale Watch to Enforce the Guaranty)**

45. The Bank realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 44 above.

46. On June 14, 2000, Salem Whale Watch executed and delivered to the Bank a Commercial Guaranty whereby it absolutely and unconditionally guaranteed the Borrower's indebtedness to the Bank. A true and accurate copy of the Guaranty is attached hereto and incorporated herein by reference as **Exhibit K**.

47. Sovereign Bank holds the Guaranty as successor by merger with First Essex Bank, F.S.B.

48. The Borrower defaulted under the terms and conditions of the Note, as modified, as set forth above.

49. Accordingly, on March 9, 2005, the Bank advised Salem Whale Watch of the defaults and made demand for the full amount due under the Commercial Guaranty. A true and accurate copy of the Demand is attached hereto and incorporated herein by reference as **Exhibit L**.

50. Salem Whale Watch failed and refused and continues to fail and refuse to respond to the Demand.

51. Therefore, Salem Whale Watch is liable to the Bank in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty.

## **COUNT VII**

### **(v. Lake Champlain to Enforce the Guaranty)**

52. The Bank realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 51 above.

53. On June 15, 2000, Lake Champlain executed and delivered to the Bank a Commercial Guaranty whereby it absolutely and unconditionally guaranteed the Borrower's indebtedness to the Bank. A true and accurate copy of the Guaranty is attached hereto and incorporated herein by reference as **Exhibit M**.

54. Sovereign Bank holds the Guaranty as successor by merger with First Essex Bank, F.S.B.

55. The Borrower defaulted under the terms and conditions of the Note, as modified, as set forth above.

56. Accordingly, on March 9, 2005, the Bank advised Lake Champlain of the defaults and made demand for the full amount due under the Commercial Guaranty. A true and accurate copy of the Demand is attached hereto and incorporated herein by reference as **Exhibit N**.

57. Lake Champlain failed and refused and continues to fail and refuse to respond to the Demand.

58. Therefore, Lake Champlain is liable to the Bank in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty.

### **PRAYERS FOR RELIEF**

WHEREFORE, the Plaintiff, Sovereign Bank successor by merger with First Essex Bank, F.S.B., prays for the following relief:

1. That Judgment enter in favor of the Plaintiff, Sovereign Bank successor by merger with First Essex Bank, F.S.B., and against the Defendant, Bowditch Boat Holdings LLC, in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Note pursuant to Count I of the Complaint;

2. That Judgment enter in favor of the Plaintiff, Sovereign Bank successor by merger with First Essex Bank, F.S.B., and against the Defendant, Robert E. Blair, Jr., in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter

accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty pursuant to Count II of the Complaint;

3. That Judgment enter in favor of the Plaintiff, Sovereign Bank successor by merger with First Essex Bank, F.S.B., and against the Defendant, Robert J. Salem, in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty pursuant to Count III of the Complaint;

4. That Judgment enter in favor of the Plaintiff, Sovereign Bank successor by merger with First Essex Bank, F.S.B., and against the Defendant, Henry Lord, in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty pursuant to Count IV of the Complaint;

5. That Judgment enter in favor of the Plaintiff, Sovereign Bank successor by merger with First Essex Bank, F.S.B., and against the Defendant, Goldeneye Corporation, in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty pursuant to Count V of the Complaint;

6. That Judgment enter in favor of the Plaintiff, Sovereign Bank successor by merger with First Essex Bank, F.S.B., and against the Defendant, Salem Whale Watch & Cruise Company LLC, in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as

of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty pursuant to Count VI of the Complaint:

7. That Judgment enter in favor of the Plaintiff, Sovereign Bank successor by merger with First Essex Bank, F.S.B., and against the Defendant, Lake Champlain Transportation Company, in the principal amount of \$180,009.56, interest in the amount of \$15,977.05 as of March 15, 2005 and thereafter accruing, late fees in the amount of \$2,381.72 as of March 15, 2005 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Guaranty pursuant to Count VII of the Complaint; and

8. For such other and further relief as this court deems just and equitable.

SOVEREIGN BANK, SUCCESSOR BY  
MERGER WITH FIRST ESSEX BANK, F.S.B.

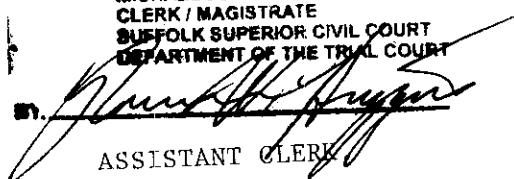
By its Attorney,  
RIEMER & BRAUNSTEIN LLP

Dated: March 16, 2005

HEREBY ATTEST AND CERTIFY ON  
APRIL 6, 2005 THAT THE  
FOREGOING DOCUMENT IS A FULL,  
TRUE AND CORRECT COPY OF THE  
ORIGINAL ON FILE IN MY OFFICE,  
AND IN MY LEGAL CUSTODY.

  
Meegan B. Casey  
BBO #648526  
Riemer & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts 02108  
(617) 523-9000

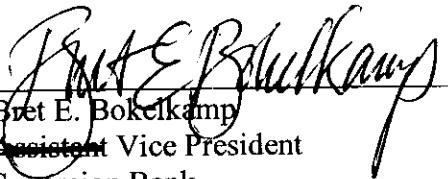
MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE  
SUFFOLK SUPERIOR CIVIL COURT  
DEPARTMENT OF THE TRIAL COURT

  
ASSISTANT CLERK

**PLAINTIFF'S VERIFIED AD DAMNUM PURSUANT TO**  
**MASSACHUSETTS GENERAL LAW, CHAPTER 231, SECTION 13B**

I, Bret E. Bokelkamp, Vice President of Sovereign Bank, successor by merger with First Essex Bank, F.S.B. (the "Bank"), having personal knowledge of the facts pertaining to the above-captioned case, and based upon the Bank's books and records kept in the ordinary course of business, being duly sworn on oath, do hereby state that as of March 15, 2005 the total amount of loss sustained by the Bank, and due and owing from Defendants, jointly and severally, Bowditch Boat Holdings LLC, Robert E. Blair, Jr., Robert J. Salem, Henry Lord, Goldeneye Corporation, Salem Whale Watch & Cruise Company LLC, and Lake Champlain Transportation Company is the principal amount of \$180,009.56, interest in the amount of \$15,977.05 and thereafter accruing, late fees in the amount of \$2,381.72 and thereafter accruing, plus all costs and attorneys' fees incurred by the Bank in enforcing its rights under the Commercial Promissory Note, and Commercial Guaranties.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 10<sup>th</sup> DAY OF MARCH, 2005.

  
\_\_\_\_\_  
Bret E. Bokelkamp  
Assistant Vice President  
Sovereign Bank

58025.524.878841.1